

EXHIBIT A

Transcript of March 28, 2023 Montana House Judiciary Committee Hearing on SB 419

Davis Wright Tremaine

April 5, 2023

Transcript by TransPerfect

[00:00:00]

CHAIR AMY REGIER: The House Judiciary will come to order. Will the Secretary please take roll?

SECRETARY: Thank you, Madam Chair, Vice-Chair Ler.

VICE CHAIR LER: Here.

SECRETARY: Vice-Chair, Bishop.

VICE CHAIR BISHOP: Here.

SECRETARY: Representative Mitchell.

REPRESENTATIVE BRAXTON MITCHELL: Here.

SECRETARY: Representative Sheldon Galloway.

REPRESENTATIVE SHELDON GALLOWAY: Here.

SECRETARY: Representative Smith.

REPRESENTATIVE LAURA SMITH: Here.

SECRETARY: Representative Deming.

REPRESENTATIVE LEE DEMING: Here.

SECRETARY: Representative Knudsen.

REPRESENTATIVE CASEY KNUDSEN: Here.

SECRETARY: Representative France.

REPRESENTATIVE TOM FRANCE: Here.

SECRETARY: Representative Carlson.

REPRESENTATIVE JENNIFER CARLSON: Here.

SECRETARY: Representative Howell.

REPRESENTATIVE SJ HOWELL: Here.

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SECRETARY: Representative C. Hinkle.

REPRESENTATIVE CALEB HINKLE: Here.

SECRETARY: Representative Duram.

REPRESENTATIVE NEIL DURAM: Here.

SECRETARY: Representative Hawk.

CHAIR AMY REGIER: Excused.

SECRETARY: Representative Zephyr.

REPRESENTATIVE ZOOEY ZEPHYR: Here.

SECRETARY: Representative Kmetz.

REPRESENTATIVE GREG KMETZ: Here.

SECRETARY: Representative Etchart.

REPRESENTATIVE JODEE ETCHART: Here.

SECRETARY: Representative J. Hinkle.

REPRESENTATIVE JED HINKLE: Here.

SECRETARY: Representative Rusk.

REPRESENTATIVE WAYNE RUSK: Here.

SECRETARY: Minority Leader Abbott.

REPRESENTATIVE KIM ABBOTT: Here.

SECRETARY: Chair Regier.

CHAIR AMY REGIER: Here. Good morning, everyone. We are going to begin with Senate Bill 419. We'll open Senate Bill 419. Senator, please open on your bill.

SENATOR SHELLEY VANCE: Madam Chair, member of the House Judiciary, my name is Shelley Vance, Senate District 34. I hail from Gallatin County, and I represent Belgrade and the surrounding area. It's an honor for me to bring you Senate Bill 419, a ban to – excuse me, a bill to ban TikTok in Montana. Weeks ago, China shocked our nation and our state when it flew a

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surveillance balloon over Montana and other parts of our nation. This brazen intrusion of our national sovereignty gathered untold information in service of the Chinese Communist Party. Whatever information the balloon gathered, it surely fell short of China's other surveillance tool, TikTok. After years of investigative reporting, we now know this to be true. TikTok endangers the safety of Montanans and Americans at large. We know beyond a doubt that TikTok's parent company, ByteDance, is operating as a surveillance arm of the Chinese Communist Party and gathers information about Americans against their will or unknown to them. TikTok, which markets itself as a harmless mobile app, entices people to download the app like any other social media network to join viral dance trends, post funny entertaining content and all sorts of shiny distracting things. Once downloaded, TikTok has access to the most sensitive information on your device—your name, your home address, your personal network, your friends, your online viewing habits and whole host of other pieces of information. You're not the user, you're being used. Senate Bill 419 puts an end to China's surveillance operation in Montana. It's operative clause is simple: "TikTok may not operate within the territorial jurisdiction of Montana." Whenever TikTok operates where the criminal law of Montana applies, it's on the hook for \$10,000 dollars. Penalties attached for each discreet violation and continue in the amount of an additional \$10,000 dollars each day the violation occurs. This bill also provides for contingent voidness by allowing TikTok to operate in Montana if it severs its ties with ByteDance. Madam Chair, the Attorney General of Montana and others on his team are here with me today to speak on the bill. Thank you.

CHAIR AMY REGIER: Thank you. We'll begin with proponents in the room. I am limiting testimony to two minutes, both online and in the room. Thanks for being here.

ATTORNEY GENERAL AUSTIN KNUDSEN: Excuse me. Madam Chair and members of the committee, for the record, Attorney General Austin Knudsen here representing the Montana Department of Justice. I want to thank Senator Vance for bringing this very important bill. We've seen some amazing things in the last few weeks. As the Senators noticed – or as she noted, the surveillance spy drone that floated over our state, took pictures of our sensitive nuclear installations here in Montana, but let's just talk about TikTok, that we're talking about here today. We've seen some amazing things on Capitol Hill. We've seen bipartisan support for a federal ban on TikTok. I think that's pretty amazing in and of itself. We saw the CEO of TikTok

[00:05:00]

get in front of a bipartisan Congressional Committee and duck and dive and do everything he could to not say that TikTok is spying on Americans. We know that's exactly what TikTok is doing. TikTok is spying on Americans, period. TikTok is a tool of the Chinese Communist Party. It is owned by a Chinese company, and under China law, if you are based in China, you will cooperate with the Chinese Communist Party, period. If they request that data, they will – they required to turn it over, and that's what's happening here. We know this just from all the investigations that have gone on from our own internal investigations. There's a lot of people here behind me that are employees of the Department of Justice who are much more knowledgeable than I am and can provide some detailed information for you. I'm not one to ban private business, but I think this is an extraordinary situation. This is a business that is controlled

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by an existential threat an enemy of the United States, and that's China's own words. China considers America it's largest enemy by their own military doctrines and publications. They see a war with the United States as inevitable, and they're using TikTok as an initial salvo in that war. So, I would strongly urge a due pass here. This is something we think we can defend and something we think we can enforce. So, thank you, Madam Chair.

CHAIR AMY REGIER: Thank you. Next proponent in the room.

ANNE DORMADY: Madam Chair and members of the Committee, my name is Anne Dormady—D-o-r-m-a-d-y. I'm the current Information Bureau Chief at the Division of Criminal Investigation with the Montana Department of Justice. I've been with the organization for 19 years. Part of my responsibility is coordinating threat response strategies for our state, both foreign and domestic. My team works closely with state government and federal law enforcement agencies all committed to protecting Montana and national interests from foreign interference. At the same time, I also oversee our Cyber Crime Unit and Internet Crimes Against Children Program, aggressively pursuing online sexual predators. I'm here today on behalf of Montana Department of Justice to discuss some observations and analysis regarding the impact of TikTok and the potential threat it poses to Montana. TikTok is owned by the company ByteDance, which is headquartered in Beijing. There are grave concerns with this popular app related to national security and China's influence through TikTok. TikTok has claimed that the company protects all American users' data and that the Chinese government officials have no access to it. However, ByteDance recent confirmed the company employees use TikTok to track U.S. journalists' IP addresses to find their location information to determine if employees were meeting with the media. FBI Director, Wray, and a Commissioner of the Federal Communications Commission, or FCC, have made public statements about concerns related to the economic and national security threat that the Chinese government poses to the United States, including statements specifically about TikTok. Last year, the Montana Department of Justice identified this threat posed by the app and banned the use on agency devices due to the potential foreign government security threat. Imagine if the app was used for nefarious reasons by the Chinese government to target staff by determining location data on where they lived, their routes of travel, who they communicated with, or any other sensitive information housed on state-owned devices. Finally, there are concerns on the threat the application poses to children by online predators. Nationally, predators have been found guilty of using TikTok to commit child exploitation by targeting minors viewing and even distributing child pornography. The Montana Internet Crimes Against Children Program, which is one of the units I oversee, has received multiple cyber tip reports on concerns that child exploitation is occurring through TikTok. Chair and Members of Committee, as our federal partners continue to assess the impact to national security given what we know, then it is reasonable to ask if the Chinese government should be able to track and control the data collection on Montana's citizens. We have a responsibility to protect our citizens from harm, and as innocent -

MALE VOICE: Madam Chair, time is up.

ANNE DORMADY: - and entertaining as this software system appears to be, it can be used for malicious intent with global implications of harm. Thank you for your time.

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ERIC TARR: Good morning. Madam Chair, my name is Eric Tarr—T-a-r-r-. I'm the Information Security Officer for the Department of Justice. My role here today is to talk about the data extrapolation and understand how TikTok is taking our personal data and using it for their benefit.

[00:10:00]

If you look at the privacy policy of TikTok and read it, it actually tells you it will scan things more than what's just on the app. As soon as you open it, it will scan everything on your device, including your computer files, and any other data. So, the point that we're trying to make is there's a lot more on the back end that TikTok is grabbing from the citizens of Montana, and we see the traffic going to China. So, 30 percent of the traffic is always going to China from the IP addresses that TikTok and ByteDance are using. The main issue I have is the data protection. So, we have to protect the integrity of the data and the citizens, and that's why I'm here today. So, I will answer any technical questions if you had them. So, thank you.

CHAIR AMY REGIER: Thank you. Next proponent. No further proponents in the room? Moving online, Steve Cape.

STEVE CAPE: Mr. Chairman, Members of the Committee, thank you for having this bill and a hearing and the witnesses. I come here on behalf of a Montana Coalition for Safety and Justice. Privacy has become a major issue with us because privacy and data security is key to a free society and the safety of our citizens. With that, I testify with a background in data security. I am a member of the International Association of Privacy Professionals. I also sit on the American Bar Association in Cyber Security, Privacy and Digital Rights Committee. I also sit on the Human Rights Committee. TikTok is one of the greatest dangers when it comes to privacy security, and is a great danger to our citizens, it's a great danger to our children. Within 40 minutes of using TikTok, your information off your computer has been sent to China and a profile has been made based on what you're watching.

ANNOUNCER: Madam Chair, one minute left.

STEVE CAPE: If you're depressed, you will successfully be sent more depressive videos finally to how-to-kill-yourself videos. If you're a child molester, they pick that up and immediately within 55 minutes, you're in the middle of child exploitation videos. If you have any other personal issue, it will take you right to [PH] viddies and feed on them. While you're watching it, it's taking all your data. It's taking all the data of anything that's connected to your device. So, your phone, your connections, your contacts, your children's information, the children's information and who they play with and talk to is all being sent to China. It's all being exploited. It's all being used. Using TikTok is the digital equivalent of inviting Bundy, Adolf Hitler, [PH] Mangala right into your own house.

CHAIR AMY REGIER: Joel Thayer.

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JOEL THAYER: Thank you, Madam Chair and esteemed Members of this Committee for allowing me to testify in support of SB419. My name is Joel Thayer and I am a practicing attorney in the technology space in Washington, DC, and am President of the Digital Progress Institute, which is a nonprofit organization that advocates for incremental changes in the tech sector through bipartisan consensus. It is my view that SB419 presents a measured bill that seeks to address an important public policy concern, which in this case is the Chinese government's use of China's own technology to surveil American citizens. Candidly, given the lack of federal leadership regarding a commercial ban of TikTok, Montana is well suited to act as a leader here. It's undeniable that TikTok is more than just an innocuous dancing app. It is a sophisticated tool designed to monitor your every move and collect your physical characteristics, much like other social media companies do. However, TikTok has one troubling distinction from its competitors, the Chinese government may be the one watching. Such potential access from a foreign government to Americans' data drove the Biden administration to call for a full ban of the app.

[OVERLAY]

MODERATOR: Madam Chair, one minute.

[OVERLAY]

JOEL THAYER: [INDISCERNIBLE] President Biden's call for a ban hearkens back to what the Trump administration attempted in its 2020 order. Strangely, some take issue with ban the app commercially on the grounds that TikTok has a First Amendment right to be in our markets. However, the First Amendment does not prevent the government from imposing a ban on TikTok. The courts have been very clear on this issue.

[00:15:00]

The government would be acting here based on TikTok's conduct, namely its action that present an unacceptable national security threat, not based on the content of TikTok's speech or that of its users. Courts have consistently distinguished between conduct and speech to determine whether the First Amendment is applicable or prohibitive towards the enactment or enforcement of a particular policy. I appreciate the opportunity to testify, and I look forward to addressing your questions regarding this important bill.

CHAIR AMY REGIER: Bryan Burack.

BRYAN BURACK: Madam Chair, Members of the Committee, my name is Bryan Burack—that's B-u-r-a-c-k, and I'm the Senior Policy Advisor of the Heritage Foundation's Asian Study Center here in Washington, DC. Madam Chair, TikTok presents a unique national security threat that can only be resolved through a ban. Like many social media apps, TikTok turns a cellphone into a powerful surveillance device, but TikTok is different than other social media giants. Its parent company, ByteDance, is ultimately controlled by the Chinese government and the Communist Party of China. ByteDance is obligated under Chinese law to share data with the government and to assist them with intelligence operations. The government owns a golden chair

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in ByteDance, which gives them a seat on its corporate board and the power to select ByteDance's so-called editor in chief, who is really its chief sensor and happens to be the secretary of ByteDance's Communist Party [PH] cell. TikTok's government connection is on full display during the CEO's Congressional testimony here in Washington last week. Although ByteDance has structured itself so that technically TikTok and its Chinese business are separate subsidiaries of a Cayman Island's parent, the members of Congress easily recognized that this is a shell company and that decisions are made in Beijing.

[OVERLAY]

MODERATOR: Madam Chair, one minute.

[OVERLAY]

BRYAN BURACK: [INDISCERNIBLE] is led by the same person in charge of ByteDance's larger business in China. Important TikTok staff report to ByteDance, not TikTok's CEO, and although the CEO promised not to comply with Chinese government demands, members on both sides of the aisle just didn't believe him. His bosses are legally required to help the Chinese government collect intelligence or interfere in the United States. ByteDance has tried to hide TikTok's government control behind this elaborate corporate structure. They've made grandiose promises about new security measures, but the truth is, they simply can't guarantee the privacy of American users. Under the control of the CCP, TikTok is the perfect tool for mass surveillance, political interference and influence operations. The app should be banned. I thank the Chair and the Members.

CHAIR AMY REGIER: Keith Krach. Mr. Krach, you're on mute.

KEITH KRACH: Can you hear me now?

CHAIR AMY REGIER: We can hear you.

KEITH KRACH: Okay. Good morning, and I appreciate your leadership on this issue because the reality we face as a nation is one of every increasing cyber warfare and seemingly ceaseless intense variations of weaponized technological competition. I served as Undersecretary of State. My mission was to develop a global economic security strategy to maximize national security, drive economic growth, and combat authoritarian aggression. Both sides of the aisle watched, and understand that our rivals are playing the long game, and they're playing a game of keeps, a game of four dimensional military, economic, diplomatic and cultural chess with technology at its core. And TikTok is one of China's most potent weapons. For the purpose of this critical legislation, let me just emphasize three key points. First, TikTok is controlled by the Chinese government from a legal, structural, governance and leadership perspective. It's one percent golden share stake even guarantees TikTok's algorithm can be manipulated by the Communist Party.

MODERATOR: Madam Chair, one minute.

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KEITH KRACH: Second, TikTok is programmed to be weaponized. It tracks keystrokes as well as password and location, and it also preys on children. It's disguised as candy, but it's really cocaine. I won't let my 11-year-old twins near it. And to make matters worse, it's not just about you or your children, it's about everybody you digitally interact with—your friends, your family, your business associates and everyone in your life. It's like a weaponized digital virus. And then third, it's also a powerful propaganda tool, and that's why posts on something like Tiananmen Square or democracy in Taiwan seem to magically disappear. Finally, the Chinese government and TikTok are spending millions of dollars on the best lobbyists and lawyers.

CHAIR AMY REGIER: Mr. Johnson, I need to have Mr. Krach state and spell his name for the record.

MR. JOHNSON: Madam Chair, I will bring him back.

[00:20:00]

CHAIR AMY REGIER: Mr. Krach, I need to have you state and spell your name for the record.

KEITH KRACH: Keith Krach—K-r-a-c-h.

CHAIR AMY REGIER: Thank you. And are you representing anyone in particular?

KEITH KRACH: Excuse me?

CHAIR AMY REGIER: Are you representing anyone in particular?

KEITH KRACH: Yes, the Krach Institute for Tech Diplomacy at Perdu.

CHAIR AMY REGIER: Perfect. Thank you. Seeing no further proponents online, we'll move to opponents in the room. First opponent.

Here for the next bill really, but I'm kind of worked up about this bill too. You know, I think we're picking –

CHAIR AMY REGIER: Senator, please state and spell your name?

SENATOR JEREMY TREBAS: Thank you. Yeah, appreciate that. Jumped ahead of things here. Thought you all knew me already. Senator Jeremy Trebas—T-r-e-b-a-s—just speaking on my own behalf here. Why are we picking on one app? Just because it's owned by China? If you Google anything, you look up news stories, who else is spying on us domestically? Facebook, how long have they been doing that? Facebook and Google participated in the Prism Program back when Obama was president in 2013, and they passed that information off to the NSA frankly. And most recently, Facebook was spying on American citizens who were taking about

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the election results of 2020, passing it off to the FBI. So, if we're going to ban these things, let's ban them all. Let's ban Google, let's ban – Twitter might be okay now, I'm not sure. Let's ban Facebook especially. So, if we're going to do this, let's ban them all and protect all of our citizens, right? The other question I ask you is, if I choose to put this app on my phone, is Google spying on me in the shower or TikTok?

MODERATOR: Madam Chair, one minute.

SENATOR JEREMY TREBAS: Maybe so, but I made that choice, and I know all these apps are spying on me, so I make the choice to put these apps on. I make the choice to have a cellphone frankly, which hacks my location and could be hacked by the Chinese government at any point, and they could know where I am. So, we're going to be spied on no matter what. So, let's not pick on one app. Otherwise, let's broaden the topic and talk about them all. Thanks.

CHAIR AMY REGIER: Next opponent.

SHAUNA WHITE BEAR: Hi, I'm Shauna White Bear, spelled –

CHAIR AMY REGIER: Get in front of the microphone, please.

SHAUNA WHITE BEAR: Hi, Shawna Whitebear, spelled S-h-a-u-n-a, White Bear is two words. Senator Shelley's Vance bill banning TikTok in Montana is anti-business, and it will potentially shut down thousands of small businesses like mine. My business, White Bear Moccasins, is thriving because of TikTok. When the pandemic hit, the platform not only kept me connected with my customers, but also, I was able to grow my business. Small businesses across the country make their livelihoods from TikTok in a way that energizes communities and puts money in local economics. Senate Bill 419 will create unsettle – excuse me – will also show Montana does not support entrepreneurs in our own state. It will deprive thousands of growing businesses currently active on TikTok, and Montana of a free tool that helps companies succeed and ultimately delivers meaningful economic impact to the state. White Bear Moccasins, for example, sees a significant percentage of its business generated on TikTok. Not only has it been great –

MODERATOR: [INDISCERNIBLE], one minute.

SHAUNA WHITE BEAR: - for my company, but it's an amazing tool to help communities grow. Indigenous makers like me thrive on it. This platform has opened wonderful opportunities for other makers and me. People who may not have gotten the same traction on Instagram flourish on TikTok. It has a much larger reach. Someone with 5000 followers on Instagram may have 100,000 on TikTok. Vance's argument that safety public is at risk because people will attempt the viral challenges presented on the platform is flawed. The bill points to challenges such as attempting to climb stacks of milk crates and cooking chicken in Nyquil. These challenges are promoted across platforms such as Facebook and Instagram as well. Why should the financial wellbeing of small businesses be tied to whether someone decides to do something

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unsafe? These are individual personal decisions. Shutting down TikTok and putting it's makers livelihoods at risk is not going to stop people from making bad decision.

MODERATOR: Madam Chair, two minutes.

SHAUNA WHITE BEAR: Look, too, at what TikTok has done to connect people to the rest of the world.

[00:25:00]

CHAIR AMY REGIER: Time is up. Next opponent in the room.

VICTORIA CHEYENNE: Good morning. My name is Victoria Cheyenne—C-h-e-y-e-n-n-e. Today I ask you think about when you were 18 years old. Maybe you were on your way to college or imagining what dreams, careers, futures you wanted to explore, but difficulties of figuring out who you could be and the paths to get there. When I was 18 years old, I threw myself headfirst into the film and television industry, struggling to find mentors, educators, voices of guidance. My name is Victoria Cheyenne. Today I work at producing, editing and directing at Paramount, one of the world's largest producers of entertainment. I'm proud to work for a company occupying space for innovative storytelling and being behind hit Montana shows like Yellowstone and 1883 that have contributed massively to the \$191 million dollars in direct spending in Montana, and over 840 fulltime jobs for locals, just between 2020 and 2022 alone. I'm also an indigenous filmmaker who has spent the last year working on a documentary with Native students at Montana State University in Bozeman. So, how do I hire entertainment workers? How do I spread education, awareness, how I document and spread enthusiasm for a growing film industry in Montana?

MODERATOR: Madam Chair, one minute.

VICTORIA CHEYENNE: The answer is TikTok, a platform where I've been able to uniquely reach millions of people contributing to young people across Montana having direct access to freedom of speech, access to education, access to learn how to enter the industry, an industry that is not predominantly in Montana, but Montanans have benefited from. Something that makes the United States so special is this access to freedom of speech, access to education, access to learning how we can reach all of this. Why would we want to make choices like China to limit our access to public education, public information? Why would we want to hurt Montana small businesses, students, workers and artists by banning a tool that directly contributes to the community and economy? Thank you.

CHAIR AMY REGIER: Next opponent.

KEEGAN MEDRANO: Chair Regier, Members of the Committee, my name is Keegan Medrano—that's M-e-d-r-a-n-o—and I'm here representing the American Civil Liberties Union of Montana. We oppose SB419 which prohibits TikTok from operating in Montana, targeting app stores and fining this private business and any entity helping TikTok through fines of

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\$10,000 dollars per day. So, firstly, I want to flag, we're unsure of how this bill would be implemented without an expansive exercise of government overreach. So, SB419, again, prohibits its operation and targets app stores, but I'm curious as to what is stopping me from accessing TikTok through a VPN? How will the state will know if I'm accessing it through a VPN? I mean, what's the enforcement model for this? So, there are many alternative ways to seek out this information, and that's ways that people can access information. We also believe that, again, this is a blatant exercise of censorship and is an egregious violation of Montanans' free speech rights. So, the bill deprives Montana, or people in Montana from their ability to engage with diverse viewpoints and ideas. People have engaged on TikTok on things like alternative viewpoints on vaccinations –

MODERATOR: Madam Chair, one minute.

KEEGAN MEDRANO: - and other ideas. Targeting one app from another country does not solve whatever problem proponents think they are solving. Banning TikTok, we also believe, would lay the groundwork for excessive government control over the internet and violate our constitutional right to free expression. The First Amendment protects our ability to speak, to receive information, and to associate freely, and this legislation is an egregious violation of that. And we believe that neither the state or the federal government has the authority to ban speech in this way. And as previous opponents have mentioned, what differentiates this app from other apps, which also takes in our data, tracks us, collects biometric information? So, please oppose SB419. Thank you.

CHAIR AMY REGIER: Further opponents in the room. Seeing none. Moving online, Daniel Carlino.

DANIEL CARLINO: Hey, my name's Daniel Carlino. I'm here to fight against the big government overreach that's going on in this room, and to help protect Montanans' rights. Social media companies do need to be reeled in, and I'd like to see regulation to protect our privacy, but banning TikTok at Montanans' expenses is not [INDISCERNIBLE] Facebook/Meta will profit off of this bill and is going to gain more power and control off of bills like this. This bill does not solve the problem of social media companies taking away our privacy, but this bill does just empower companies like Meta and Facebook to have more and more power to take away our privacy.

[00:30:00]

I ask that you do not take away Montanans' rights, and I ask that you stand up against this big government overreach and vote "no".

CHAIR AMY REGIER: Christopher Marchese.

CHRISTOPHER MARCHESE: Good morning, Chair, and Members of the Committee. My name is Chris Marchese spelled M-a-r-c-h-e-s-e, and I serve as Director of Litigation for NetChoice. I respectfully ask that you vote against SB419 for two reasons. First, it violates the

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First Amendment and risks unintended consequences. As we heard from earlier speakers here today, TikTok is a platform for Americans to share their free speech. And even if everybody in the room is convinced that TikTok poses a security risk, the bill is not narrowly tailored enough to survive a First Amendment challenge. For example, the bill encompasses innocent third parties that are not the subject of the bill, including apps and app stores. That alone is enough to give the court some skepticism about the bill's constitutionality. So, at the very least, the committee should rework the bill to do what it actually is alleging to do, but also recognizing that the First Amendment prohibits the government from banning Americans from using a platform or from accessing content on that platform. Now there is a CFIUS review that is ongoing at the federal level, and that choice respectively asks that the Committee wait until that review is over.

MODERATOR: Madam Chair, one minute.

CHRISTOPHER MARCHESE: Otherwise, legislation like this might interfere with efforts to ensure that Americans can still use TikTok while addressing any privacy concerns the U.S. government has. Thank you.

CHAIR AMY REGIER: Frederick Baker.

FREDERICK BAKER: Hello. My name is Frederick Baker—B-a-k-e-r. I'm in opposition of Senator Shelley Vance's bill proposing to ban TikTok in Montana as I believe it's an unwarranted attempt to control and regulate information. Many perceive TikTok as merely a platform for teenagers to share dance videos, but its offerings go far beyond that. TikTok serves as a valuable resource for small businesses in Montana seeking advice and support, a hub for building and [PH 00:32:26] finding community, and a vital network for those in recovery from addiction. As a 39-year-old combat veteran and small business owner based in Montana, I can attest to the positive impact of TikTok. After overcoming opioid dependency, legal troubles and rehabilitation, I started a metal fabrication business called Metal Tech. Promoting my business on TikTok led to significant growth and revenue, far surpassing the results from Facebook and Instagram.

MODERATOR: [INDISCERNIBLE 00:33:00]

FREDERICK BAKER: I've been able to grow my business from a plasma table and a shipping container in my backyard to my spacious shop. Not only has TikTok been instrumental in the success of my Montana-based business, but it has also contributed to my personal development and recovery journey. Addiction recovery needs community, and TikTok offers an accessible and supportive network for Montanans and similar situations. Unfortunately, this bill jeopardizes the powerful tool for personal and professional growth in Montana. By attempting to ban TikTok, the government infringes upon our First Amendments rights of freedom of speech, setting a dangerous precedent for further erosion of our constitutional rights that I and my fellow soldiers fought to protect. This legislation not only endangers businesses in Montana, but also puts nonprofits like My Hoodies for Heroes at risk, and we're –

CHAIR AMY REGIER: David Edmonson.

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DAVID EDMONSON: Good morning, Chair Regier and Members of the Committee. My name is David Edmonson. That's E-d-m-o-n-s-o-n, and I'm here on behalf of Tech Net respectfully testifying in opposition to SB419. Listening to today's testimony and the bill layout, I understand that the bill seeks to prohibit the use of TikTok in Montana. However, as currently written, SP419 would affect separate technology companies that we do not believe are the intended targets of the legislation, specifically companies that operate app stores. As drafted, a company would violate the provisions of the bill simply by having the app listed as an option to be downloaded within Montana. App stores, however, do not have the ability to geo-fence on a state-by-state basis, and it would thus be impossible

[00:35:00]

for our members to prevent the app from being downloaded specifically in the state of Montana. We therefore urge this Committee and the House to narrow the bill by removing the references to mobile application stores. Appreciate your consideration and thank you for your time.

CHAIR AMY REGIER: Seeing no further opponents online. Do we have any informational witnesses in the room?

ANNA SCHNEIDER: Madam Chair, Members of the Committee, my name is Anna Schneider—S-c-h-n-e-i-d-e-r. I am the Bureau Chief for the Office of Consumer Protection with the Department of Justice, and I am here to answer any questions that you may have regarding the investigation and litigation.

CHAIR AMY REGIER: Thank you. Further informational witnesses. Seeing none. Questions from the Committee? Representative Kmetz.

REPRESENTATIVE GREG KMETZ: Madam Chair, I have a question for the Attorney General.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative.

REPRESENTATIVE GREG KMETZ: Madam Chair, Attorney General, what are our kids being exposed to on TikTok?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative Kmetz, a lot of harmful stuff frankly. The more we dig into an investigate the content—and I want to stress, this bill is not about content—I don't care what the content on TikTok is, I'm concerned with the spying applications for the Chinese Communist Party. But with that said, as a parent of teenage kids, it's certainly something I've looked into. There's a lot of dangerous content that TikTok pushes. There was an investigation earlier in the year, some really good investigative journalism where a handful of news outlets put together basically false profiles. Built a profile for themselves on TikTok and rolled in TikTok and put themselves out there as 13-year-old and 14-year-old children. And within a matter of less than an hour, these "children" were being fed

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content from TikTok, pornographic content, drug abuse content, suicide content. Frankly stuff that no 13 or 14-year-old child should be exposed to. And again, I want to stress, this bill is not about content. This is about TikTok being abused and used a foreign entity to spy on Montanans and spy on Americans. However, I do have some content – definite content concerns being pushed on children by TikTok. Madam Chair.

CHAIR AMY REGIER: Representative Ler.

REPRESENTATIVE BRANDON LER: Also, for the Attorney General.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Mr. Vice-Chair.

REPRESENTATIVE BRANDON LER: Madam Chair, eg, what types of information can TikTok harvest from its users.

ATTORNEY GENERAL AUSTIN KNUDSEN: This is pretty amazing. Madam Chair, Representative Ler, this is pretty amazing stuff. First of all, I will say that Mr. Tarr might be able to provide some better information on this, but I have done some of my own research on this. If you look at the actual privacy settings that TikTok has available on its app--most people just scroll through that stuff and click “accept” and just go--but if you actually look into what they can collect, it’s quite concerning. First of all, TikTok basically gave itself permission to collect all of your biometric data. Your keystrokes, but let’s talk about facial recognition. I mean, that’s one that’s very concerning to this legislature. We’ve already seen some legislation moving. They’re collecting your facial recognition data, and it says right in their privacy settings that they’re doing that. They’re scanning the backgrounds of all your other apps on your phone. That was stated earlier, but I really want to stress that. I mean, you are allowing ByteDance and therefore the Chinese Communist Party access to everything on your phone. They’re scanning all of your files. They’re scanning all of your other apps. They’re tracking your background information. They’re tracking your location. They’re going so far as to when you post that funny video on TikTok, they’re scanning the background information in that video and in that photographic evidence for any kind of sensitive useful intelligence. Is there anything in that picture we can use? So, this is pretty astounding stuff. I’m not going to stand here and defend any of the other social media companies either. I think they do certainly some egregious things, but none of them to that level. None of the other applications are collecting data on that level.

REPRESENTATIVE BRANDON LER: Follow up.

CHAIR AMY REGIER: Go ahead.

REPRESENTATIVE BRANDON LER: Last question, why should Montana ban this if the federal government is already looking at doing so.

ATTORNEY GENERAL AUSTIN KNUDSEN: Mr. Chairman – Madam Chairman, Mr. Vice-Chair, that’s a great question. First of

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all, I think Montana's got an opportunity here to be a leader. No other state has done this. Secondly, I think we found an actual enforceable mechanism for us to do that. Third, there's no guarantee that the feds are actually going to act here. I mean, there's a lot of saber rattling going on, and it's bipartisan, which I'm really, really excited about. I'm glad that both sides of the aisle are equally concerned about national security, equally concerned about providing intelligence to a stated enemy. And again, I really want to stress that. In Chinese People's Liberation Army published materials—and you have to understand that the PLA, the People's Liberation Army in China is not a stand-alone entity. It is an arm of the CCP. It is an arm of the Chinese Communist Party. So, nothing comes out of the military doctrines without signoff by the CCP. In China's military published manuals and a lot of their training materials, they don't refer to the United States as “the United States”. They refer to us as a term that is best translated as “strong enemy”. That is their term for the United States in all of their military doctrine and all of their training manuals. So, at the outset, we are dealing with a foreign actor who views the United States as an existential enemy. To me, that's the real concern here. So, I think Montana's got a great opportunity here to be on the cutting edge and be the first, be out in front of this. But really, I'm concerned about whether the feds are actually going to do anything here. Madam Chair.

REPRESENTATIVE BRANDON LER: Thank you.

CHAIR AMY REGIER: Representative Mitchell. Chair, I have one for the AG, also.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative.

MITCHELL: Madam Chair, Attorney General, so from my understanding, TikTok is banned in China. So, why do you think that China, they isolate their app from their kids and their own culture but why do you think they're not isolating it from the kids in our country.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative Mitchell, that is an excellent point and thank you for bringing that up. That's a great point for folks that maybe don't know that. The version of TikTok that we get here in the United States, the Chinese government doesn't even allow its own citizens to have access to. They don't let their children see the content that they push on our children, and I think there's a real question there. Why is that? Again, I'm kind of a nerd on this stuff, and I was doing some reading into Chinese military doctrine, like what are they training their soldiers and their military brass? Well, they have a think asymmetric warfare, and one of their stated goals, stated tools within a lot of their military doctrine is aimed at creating social unrest, creating – undermining our country through media, through social media. They view this as a weapon of war, as a tool to undermine our country, and I think we have to ask ourselves if a lot of the dangerous content that is being pushed into American and onto American children is not allowed in China for their own children, we have to ask ourselves just exactly how fair is this? Representative, Madam Chair.

CHAIR AMY REGIER: Follow up?

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REPRESENTATIVE BRAXTON MITCHELL: For Mr./Miss Tarr, can't remember who.

ERIC TARR: Madam Chair, Mr. Revenue.

REPRESENTATIVE BRAXTON MITCHELL: Now I'm sure, Mr. Tarr, can you explain to the degree of control that the CCP has over ByteDance and TikTok, and then how specifically does China access data from American users? Because I mean I know if I go on my phone here, if I have the app downloaded, you grant access to microphone, you grant access to photos, you grant access to this, that and this. Unless that application is closed, and they don't necessarily have to be on it, at anytime, anywhere you go, they have access to what you're doing, what you're streaming, what you're saying through your microphone. Do you know how they access all that and if they do when you're not –

ERIC TARR: Madam Chair and Mr. Representative, I don't have all the technical details on that right now. I do know if you leave the app running in the background, it's still scraping information on your phone. So, if you don't close app out on the phone, it's still going out there and extrapolating all the information. So, any files you open during the day, if that app is still running on the back end, it's going to grab that information, text messages and anything like that. And as far as the first part of your question, I don't have that information for you.

REPRESENTATIVE BRAXTON MITCHELL: Just one more.

CHAIR AMY REGIER: Go ahead.

REPRESENTATIVE BRAXTON MITCHELL: Are there any less restrictive ways for kind of protecting Montana's interests, other ways of maybe going about this potentially? And do you think this is a constitutional effort?

ERIC TARR: I'm probably not at the level to answer that one, so I might have to defer.

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Sorry.

ATTORNEY GENERAL AUSTIN KNUDSEN: I got pointe at, Madam Chair. May I answer?

CHAIR AMY REGIER: You may. Thank you.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative Mitchell, I think this is the least restrictive way for us to do this. I want to stress, I mean, we made it appoint, we're not coming after individual users. I have no interest in doing that, and the bill before you specifically prohibits that. The easiest way for us to do this is through the Google Play Store and the app store in Apple. Despite some testimony that you heard earlier from opponents, they do have the ability to block certain apps. They do have the ability to geo-fence certain apps out of Montana. That technology exists and it's in use. I'll point to certain gambling

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apps. Gambling is legal in some states, it's illegal in other states. Lottery is legal in some states, it's illegal in other states. Why is it when you drive between states, suddenly your gambling app in one legal state shuts off and is not able to be used in the state you're visiting? It's because they geo-fenced that app out. That technology exists. Likewise both Google and Apple block certain apps every day for all kinds of different reasons, but we know there are certain apps that for whatever reasons—political, financial, whatever they may be—that those entities block from their application stores. So, the idea that this can't be done is just simply not true. It can be done quite easily and there's a lot of data out there that that's doable. The constitutional question, I do think this will withstand First Amendment scrutiny, Madam Chair and Representative. Again, we've done this in the least restrictive way we can, number one. Number two, this is not content-based. This has got nothing to do with the content put out by TikTok. This has to do with their use as a spying tool on Americans by a foreign enemy. And I think that really is the key legal argument here, and we are kind of in uncharted waters here a bit. I mean, this has never really been litigated before, and frankly, we might need the U.S. Supreme Court to weigh in on this one. What is now the public square? When we're talking about the First Amendment, what is the best way to get your message, to get your free speech out there? It's not longer to stand on an apple cart in the public square and give a speech. It's to get on social media. We know that. The best way to spread your message is via social media. Well, what do you do with an entity, a social media entity that is controlled by a foreign enemy and is being used by that foreign enemy to spy on Americans? This is really unprecedented, we don't really know the full legal implications here, and I think this might be something that the courts need to weigh in on. So, from that standpoint alone, I think this legislation is valuable, but I do think it's going to withstand scrutiny. We've dug into this quite deeply. I'm very comfortable, Representative.

REPRESENTATIVE BRAXTON MITCHELL: Thank you. AG, one more follow up just for Mr. Edmonson online.

CHAIR AMY REGIER: Go ahead. Sorry, who did you say?

REPRESENTATIVE BRAXTON MITCHELL: Mr. Edmonson online.

CHAIR AMY REGIER: Mr. Edmonson.

REPRESENTATIVE BRAXTON MITCHELL: Madam Chair, Mr. Edmonson, to kind of elaborate on what the Attorney General was saying, so obviously right now, we have app – Montana, I'm not sure, you said you were from Texas, so Montana, sports betting is illegal, so apps like DraftKings, FanDuel, Sportsbook, all that stuff is all prohibited in Montana. So, you're saying that it's unenforceable to geo-fence a location, specifically Montana. I don't understand where you're getting that from. I think it's pretty easy to geo-fence or shut down an app. Obviously, you can download an app still, but it might just buffer, but I think it's pretty easy from my understanding to prevent an app from being used in the state. Are you just saying that because it's out of your convenience to do so or –

DAVID EDMONSON: Madam Chair, Representative, no, sir. So, while that conversation was just going on, while the Attorney General was talking, so I am in Texas and I can't do sports

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betting via an app. I downloaded the app to be able to do so, but the compliance is on the app to verify my location--I mean, I literally just did this—to ensure that I am in a location in which gambling is allowed. So, the app is the actual one that ensures that they are able to operate in an area in which it's not restricted. During my testimony, I mentioned that app stores aren't able to geo-fence on a state-by-state basis. They do so on a national level, but don't have that capability at a sub-national

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level. And the issue comes about over the fact that state borders are going to be hard borders in the same sense as national ones. You know, consider someone that is near the border in Montana in another state but their wireless service might be using a tower in another state. So, that person is going to be located in Montana physically, but their cell service is being provided by another state. And so, removing the app store provisions wouldn't make the ban meaningless. Instead, it would just place the responsibility on TikTok much like it is with gambling apps.

CHAIR AMY REGIER: Representative Jed Hinkle.

REPRESENTATIVE JED HINKLE: Thank you, Madam Chair. I guess I'll start out with the sponsor.

SENATOR SHELLEY VANCE: Madam Chair, Representative.

REPRESENTATIVE JED HINKLE: Thank you, Madam Chair and Senator, couldn't let you off in the hearing here. I don't know if you will be able to answer this question, so you can re-refer if need to be, but I notice that the internet service provider was struck out of the bill. Guessing that must have happened over in the Senate. I heard just some rumblings about the internet service provider and how that's really the teeth if the State of Montana were to ban TikTok. However, it was taken out of the bill. Could you help us to understand why it was taken out of the bill and/or if it needs to be put in the bill to make what we're trying to do here, or what you're trying to do here successful?

SENATOR SHELLEY VANCE: Madam Chair, Representative. Hinkle, I will try to answer your question, but I am going to defer if I – if we need further explanation on that. My understanding is, okay, I'm going to go old school. I recognize the fact that we have got a minimum of three generations in this room, maybe a little older than that, I don't know, or more than that. I don't know. So, my explanation would be going old school, a telephone line is like an ISP to a landline. So, take it down to one of these, the ISP, the internet service provider is like the line of connection between the apps that we put on our phone and the actual phone. So, any further? Okay. That's me – so, we took it out because it was a situation where the ISPs were not the ones that are doing the spying. They're not the ones that this bill is all about. Thank you.

REPRESENTATIVE JED HINKLE: Thank you, and if I could also, Madam Chair, ask a question of the Attorney General?

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CHAIR AMY REGIER: Attorney General?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative Hinkle.

REPRESENTATIVE JED HINKLE: Thank you, Madam Chair, Attorney General. So, what I'm looking at it, and I think you touched on a little bit with Representative Mitchell's question, but I'm looking at just to try to get a picture of how this is really going to be enforced in Montana should this bill go forward, and if you have any comments on the internet service provider, whether that's actually a key part of the legislation or – just give me a picture of how this is going to work, should this be signed into law in the state of Montana. We have individuals who already have this on their phones. We have individuals from out of state that may be coming into Montana with this on their phones. And then also there's a question of simply switching off your location on your phone and then being able to download the app that way, and to get around – if you could just cover kind of those topics. Thank you.

ATTORNEY GENERAL AUSTIN KNUDSEN: Sure. Madam Chair, Representative Hinkle, I'm going to state at the outset, I'm not IT guru, so some of that might be a little out of my wheelhouse, but let's talk about enforcement, how this could – well, let's talk about ISPs first. We felt that was an appropriate amendment to make in the Senate after some discussions with a lot of the ISPs, a lot of the cellphone carriers, because that's usually how people are downloading content. We didn't think it was necessarily appropriate to hold them accountable for what the end user of the phone, number one, but number two, I think more importantly, the application store is offering. So, from an enforcement standpoint, no, I don't think that ISP component is necessary to the bill. We're comfortable with this. In fact, I think this is a

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better product. I mean, really what we're talking about is the application markets. That's how we're going to enforce this. I want to stress again—and it says right in the bill—we cannot enforce this on the end user. If you've got TikTok on your phone, you want to download TikTok on your phone, you're not going to get a knock on the door from the Department of Justice. We're specifically precluded from doing that. What we can do for enforcement is civilly go after Google and Apple for offering this product on their application stores, and that's how we're going to enforce this. It'll be done through our Office of Consumer Protection. That's where we've got the teeth under the Montana Unfair Trade Practices Act, and we've got investigative authority, and we've got civil enforcement authority through that office. So, from that standpoint, I think we're good. I forget the last part of your question, Representative. I apologize.

REPRESENTATIVE JED HINKLE: Madam Chair, Attorney General, the last part of the question was, I guess, just switching off the location data – the location on your phone and then being able to still download the app because there is no location. And then with that, and I'm still asking a question, are there any other entities beyond Google and Apple who offer that app? As you know, I'm a flip phone user, and I don't even download apps. So, if everyone wants to be safe from TikTok, I think you should go back to flip phones. But anyway, if you could just kind of touch on those subjects. Thanks.

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ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair and Representative Hinkle, the further down this rabbit hole I go, the more I agree with you, and I'm considering going back to my trusty old flip phone. And for the record, that's what I got my children when they wanted a cell phone for the house. I got them a flip phone. Representative, some of that stuff is probably a little out of my wheelhouse just from a technical standpoint. I don't know how that works if you shut your location services off, if that somehow bypasses and allows you to download from a geo-fence. I don't believe that is the case, but technically I'm not in a position I can answer that. Maybe Mr. Tarr can? I'm getting nods here. Can we get Mr. Tarr up here to re-refer that, Madam Chair?

CHAIR AMY REGIER: Yes, Mr. Tarr?

ERIC TARR: Madam Chair, Representative, so I believe the question is how, if you turn off the geolocations on your phone, is TikTok still able to track that? As the AG pointed out earlier, even if you take a video with the geolocations off, they're still tracking that information by extrapolating the geolocation in the video.

REPRESENTATIVE JED HINKLE: Madam Chair, Mr. Tarr, I think my question is can you switch your location off on your phone to get around the prohibition of downloading the app? That's what I'm looking for?

ERIC TARR: Oh, okay. Sorry. Probably not through a DNS umbrella, which is domain system umbrella, you're blocking the IP address. So, even if you were going through – you turned that off, geolocation on your phone, the app store or any store you go to is still going to have that location based on number.

REPRESENTATIVE JED HINKLE: Okay, and then Madam Chair, the second part of my question if I may ask?

CHAIR AMY REGIER: Go ahead.

REPRESENTATIVE JED HINKLE: Madam Chair, Mr. Tarr, also are there any other app providers other than Google and Apple whereby you may download this app that would not be affected with this bill, or are we capturing who needs to be enforced upon?

ERIC TARR: Madam Chair, Mr. Representative, my understanding is that it would be any provider who has an app store, so Samsung, Android. Those are all common names. So, anybody who provides those type of app stores would be included.

REPRESENTATIVE JED HINKLE: Thank you.

CHAIR AMY REGIER: Representative Etchart.

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REPRESENTATIVE JODEE ETCHART: Thank you, Madam Chair. I have a question for online, Mr. Krach.

KEITH KRACH: Yes, I'm here.

REPRESENTATIVE JODEE ETCHART: Madam Chair, Mr. Krach, can you please explain to me if there would be any difficulty or if it would be easy for these app stores that we've talked about and mentioned, for instance Google or Apple, to ban these apps from their platforms?

KEITH KRACH: Certainly. You know, this is a very appropriate method to do it. As Undersecretary of State, we came up with a program called The Clean Network, and that's how we defeated China's master

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plan to control 5G. We also had Clean Carrier, Clean Cloud, Clean Cable, Clean Apps and Clean Store. So, what you're talking about is Clean Store. Certainly, the owners of those stores have the capability to do that. I also was the CEO of DocuSign and we have one billion users around the world. So, the capabilities to do this is really an issue for these companies and they can solve it. They have the technical capabilities to be able to solve it. If you look at it in China, TikTok serves up education STEM resources for children. So, it certainly is, the ability to do that. And a big reason why this legislation is so important is because TikTok backed by the Chinese government is spending millions and millions of dollars on lobbyists and lawyers—the best money can buy—and this is going to be a precedent setting case, and one that's really needed. Just think, if the CCP can weaponize a balloon, imagine what they can do with 150 million U.S. TikTok users at its mercy? I think this is totally appropriate and these companies will obey the law. So, I think your approach is 100 percent correct.

CHAIR AMY REGIER: Follow up?

REPRESENTATIVE JODEE ETCHART: Follow up, Madam Chair, for Mr. Krach. Sir, would you be able to discuss any of the geofencing issues? From I understand with geofencing, if I'm out and I have different things on my phone of where I might want to go to dinner or advertising, that they'll pop up on my phone whether I'm in San Diego or Houston or Billings, Montana. So, if that geofencing advertising can pop up on my phone to do that, why is it going to be so hard for these tech companies to geofence different applications that are able to be downloaded on phones?

KEITH KRACH: It's not going to be difficult for them, and I think that's the point. So, they have the capabilities to do that, and I think you bring up a very profound point on this.

CHAIR AMY REGIER: Okay. Representative Duram.

REPRESENTATIVE NEIL DURAM: Thank you, Madam Chair. Question for our representative from the American Civil Liberties Union.

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CHAIR AMY REGIER: Mr. Medrano?

REPRESENTATIVE NEIL DURAM: Of Montana specifically. Thank you for being here, Mr. Medrano.

KEEGAN MEDRANO: Certainly. Chair Regier, Representative Durham.

REPRESENTATIVE NEIL DURAM: Madam Chair, Mr. Medrano, from the hundreds of emails and the handful of phone calls I've received from young people—reference this bill—this TikTok is a big deal to them. Would you agree with me that TikTok is the music played by the Pied Piper to steal this generation's heart and mind?

KEEGAN MEDRANO: Chair Regier, Representative Duram, I'm unsure a little bit of what you're getting at. There are –

REPRESENTATIVE NEIL DURAM: Madam Chair, if I may clarify?

CHAIR AMY REGIER: You may.

REPRESENTATIVE NEIL DURAM: I'm confident not everybody knows the story of the Pied Piper.

KEEGAN MEDRANO: I do. Yes, sir.

REPRESENTATIVE NEIL DURAM: The Pied Piper played a team and stole a whole bunch of children for a nefarious reason. Mr. Medrano, could you agree with me that TikTok is that music that's stealing a generation of children from the United States of America?

KEEGAN MEDRANO: Chair Regier, Representative Duram, I don't understate that there are issues with social media apps and its impact on children. If you take a look at how Instagram impacts people's perceptions of their bodies, if you take a look at how TikTok interprets and how people approach consuming information, I would counter by saying that I think that social media broadly has issues and impacts that we need to address, and that we also need to address those issues outside of our communities, right? So, we've heard about sex trafficking and child pornography, and those are horrible, awful things, and I believe that we, as a society, should address those, and that social media does not create those issues. They may exacerbate those issues, but they are reflective of the issues of our own society.

REPRESENTATIVE NEIL DURAM: Thank you, Mr. Medrano. Madam Chair, follow up?

CHAIR AMY REGIER: Follow up.

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REPRESENTATIVE NEIL DURAM: A similar concept, different language, if our daily efforts are an act of worship, would you agree that this generation is choosing CCP through TikTok as their new god?

[01:05:00]

KEEGAN MEDRANO: Chair Regier, Representative Duram, apologies, I'm not trying to be obtuse. Could you rephrase your question?

REPRESENTATIVE NEIL DURAM: Thank you, Madam Chair. More generally paraphrased, if our daily efforts and activities are a reflection of that which we value most, aka or God, and the need for TikTok for this current generation, is it fair to say that that's their act of worship, that's what they choose to worship with their daily effort?

KEEGAN MEDRANO: Chair Regier, Representative Duram, I believe that with appropriate guardrails, that individuals should be able to engage with social media apps. I wouldn't amount it to worship. I wouldn't say that TikTok is our new church, but I do believe that of course it is an important app for expression, for exploring ideas, for sharing information, and I think that that's vitally important for our younger generation. And when it comes to China, I hope that we as a body can reflect on the fact that a state may be counter to us, may be seeking to subvert, may be a challenge to us on a state-to-state or sovereign-to-sovereign level, but I also hope that we can avoid xenophobic approaches to this question of TikTok and to free speech and to our rights under the constitution. You know, I want to posit another app, Representative Duram. There's an app called FaceApp. It's owned by a Cypriot, or it's owned in Cypriot, so Cyprus, by a Russian owner. That app allows anyone to take a picture—I could take a picture of you, Representative Duram—that's available online, put it into the app, and then that company now owns your biometric data, and that's from a Russian owner. Russia is also enemy state.

REPRESENTATIVE NEIL DURAM: Thank you, Madam Chair, a follow up question for the bill sponsor, please?

CHAIR AMY REGIER: Go ahead.

REPRESENTATIVE NEIL DURAM: Chair, Senator Vance, thank you for bringing this bill. One of my concerns about the bill is if TikTok correctly spells its name as T-i-c-k, as the parasite that I believe it is.

SENATOR SHELLEY VANCE: T-i-k.

REPRESENT DURAM: If they change – the bill says T-i-k. If tomorrow we pass this bill and gets signed into law and then the day after, the corporation changes their name to T-i-c-k-t-o-k, the bill would not apply to them. Is that your position as well?

SENATOR SHELLEY VANCE: Madam Chair, Representative, I'd like to defer to the AG, please.

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CHAIR AMY REGIER: Yes.

REPRESENTATIVE NEIL DURAM: Madam Chair, if I could maybe clarify that question. Attorney General Knudsen, thank you for being here. TikTok in this bill is spelled T-i-k-T-o-k. If that corporation changed the spelling of their name but the content remained the same, would this bill still prohibit that corporation?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative Duram, that's an interesting point. I think from a logistics standpoint, from a branding standpoint, from a trademark standpoint, I don't imagine that TikTok is in a big hurry to change their name and rebrand themselves, but you do make an interesting point that, as I stand here right now, I don't have a good answer for you. Possibly—that's probably the best I can do right now. I think we would hope it would still apply, and then there's broad language in this bill that we would still be able to take care of the parent company at least. Obviously, that's a big concern, we're taking about divestment. That's probably the best I can do right now, Representative.

REPRESENTATIVE NEIL DURAM: Thank you.

CHAIR AMY REGIER: Representative Smith.

REPRESENTATIVE LAURA SMITH: Thank you, Madam Chair. I have a question. I believe it would be for the representative from it's either Tech Net or Net Choice, or technology language. It was an opponent. Do you remember? There's one of each. Oh, are they online?

CHAIR AMY REGIER: They both are online, correct.

REPRESENTATIVE LAURA SMITH: Oh, my apologies. Is that David Edmunson?

DAVID EDMUNSON: Yes, ma'am.

REPRESENTATIVE LAURA SMITH: Yes, this is Representative Smith. So, I guess I want to take us back to the privacy concerns that I think we all share on this bill. So, we heard testimony—quite a bit of testimony—that businesses rely on TikTok, and probably other platforms for advertising. So, we also heard testimony that there are a variety of apps that are already sort of culling some of our private data. I think about my own phone and the number of toddler games that I have on it. So, I guess what I think about is, would it make more sense to really look at a more

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comprehensive privacy bill that would allow folks to access TikTok and the other platforms while protecting user privacy? Do you have thoughts on that?

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DAVID EDMUNSON: Madam Chair, Representative, thank you for the question. First, I want to be clear, TikTok is not a member of TechNet, of our organization, so I can't speak to any specifics as it relates to TikTok itself. Big picture though, I do agree that a comprehensive omnibus privacy approach is sound. That's why we, as an organization, support a federal national privacy bill to offer both clear obligations to businesses as well as new rights to consumers across the country. We have been leading a national cross coalition or cross industry coalition effort in Washington, DC through our federal program to help push that conversation to the forefront. So, I think in general, without speaking to the issues of TikTok that I know are much of the source of the discussion of today's hearing, we do agree that comprehensive privacy bills make sense. Yes, ma'am.

REPRESENTATIVE LAURA SMITH: Thank you.

CHAIR AMY REGIER: Representative Zephyr.

REPRESENTATIVE ZOOEY ZEPHYR: Madam Chair, let's start with Mr. Tarr.

ERIC TARR: Madam Chair, Representative.

REPRESENTATIVE ZOOEY ZEPHYR: Madam Chair, Mr. Tarr, I want to circle way back just to clarify on a comment Representative Jed Hinkle made. In terms of downloading the app, obviously if you turn off your location data that preclude that your IP address is still received, it knows where you are. But there's nothing stopping someone from utilizing a VPN network to download TikTok from outside of the state.

ERIC TARR: So, Madam Chair, Representative, when it comes to the VPNs, it's more of a technical issue where they'd need to start geo-blocking those VPNs from certain geolocations. The State of Montana is currently doing that for state phones with several malicious state actors out there across the world. So, the possibility is there. It's just going to take a lot more work.

REPRESENTATIVE ZOOEY ZEPHYR: Just a quick follow up on that?

CHAIR AMY REGIER: Go ahead.

REPRESENTATIVE ZOOEY ZEPHYR: Thank you, Madam Chair. So, just to clarify, the intent of this bill would be if a VPN allowed you to set your location to Texas or Florida or something, and you then downloaded TikTok from there, would the intent of the Department of Justice be to pursue litigation against those VPN networks for allowing you to do so?

ERIC TARR: Okay, Madam Chair, Representative, I'm going to defer to legal counsel on that.

CHAIR AMY REGIER: Would you like to rerefer?

REPRESENTATIVE ZOOEY ZEPHYR: Yes, please, Madam Chair.

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CHAIR AMY REGIER: Attorney General?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative, I think the intent would be “no”, that would not be our intent. Yeah, I think that’s the best answer.

REPRESENTATIVE ZOOEY ZEPHYR: Thank you. Follow again for the Attorney General.

CHAIR AMY REGIER: Follow up.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative.

REPRESENTATIVE ZOOEY ZEPHYR: Madam Chair, Attorney General, again, going back to the striking out of the provision around ISPs, my reading of this bill would then be that I could access TikTok from my computer via one of my internet service like Chrome or something like that. Is that a correct understanding of this bill?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative, I mean, again, I don’t want to get too far out over my skis and try to be a technical expert in those areas. I certainly am not. My age gap is probably showing, but I might need to rerefer that one, honestly, representative, because I’m not sure I have the answer to that. Could we get Mr. Tarr back up here?

REPRESENTATIVE ZOOEY ZEPHYR: [PH] We’ll walk back and forth, and -

ATTORNEY GENERAL AUSTIN KNUDSEN: Maybe we’ll both just stand here.

REPRESENTATIVE ZOOEY ZEPHYR: Madam Chair, Mr. Tarr, the question was, my understanding of the striking out of the ISP line in this bill, you can download TikTok onto your phone. They also have a website that you can scroll the same content on. My understanding is that this bill would allow for someone to go onto Chrome or whatever internet browser they choose and access TikTok in that way. Is that correct?

ERIC TARR: Madam Chair, Representative, yeah, you could still go online. That’s where I was mentioning the DNS umbrella. So, we would have a domain name blocked for IP addresses. So, coming into the State of Montana, if you were online and you’re trying to go use TikTok, we could have Google block those type of things too. Is that answer kind of –

REPRESENTATIVE ZOOEY ZEPHYR: That does, thank you. So, one follow up quickly for you. Is the data –

CHAIR AMY REGIER: Follow up.

REPRESENTATIVE ZOOEY ZEPHYR: Thanks. Sorry, Madam Chair.

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So, is the concern around the data that's being collected, we heard the sponsor mention name, home, viewing habits, friends, network—network being your IP address—data that's collected by other social media network as well?

ERIC TARR: Madam Chair, Representative, you know, looking at other social platforms, they do collect certain things, but there's privacy settings that you actually have to go in and click. The issue we're seeing with TikTok is, they're blatantly stating in their privacy, they're even collecting your keystrokes and everything as soon as you agree. There's no settings where you can turn that off.

REPRESENTATIVE ZOOEY ZEPHYR: Follow up for the Attorney General.

CHAIR AMY REGIER: Follow up.

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative.

REPRESENTATIVE ZOOEY ZEPHYR: Thank you, Madam Chair, Attorney General. I am a little bit astounded by, I think, we talked about the technical understanding here. I feel like there's a lack of understanding around how algorithm works, around how other social media companies collect data around what [PH] worship is. My question is, we see, we talked – one of the proponents or opponents mentioned Facebook selling data around election security. We talked about Cambridge Analytica. My question for you is, if privacy is the concern—and you said content's not the concern, privacy is the concern. This feels so much like it's not about that concern. Moreso that it's about saber waving for China. Can you talk about why you're not doing that broad type of privacy bill that was discussed by the TechNet representative?

ATTORNEY GENERAL AUSTIN KNUDSEN: Sure. Madam Chair, Representative, again, I come back to my previous testimony. I think this is a unique legal question, and I think this is a unique legal situation. Certainly, I have concerns about other social media companies collecting data. I have concerns about privacy, I have concerns about personal data of Montanans being collected by other companies. I think the discreet difference here is that those are U.S. companies, and from a legal standpoint, I think that puts us in a lot different situation. This is –

REPRESENTATIVE ZOOEY ZEPHYR: Follow up, real quick. Sorry to cut you off. Can I follow up?

CHAIR AMY REGIER: Follow up.

REPRESENTATIVE ZOOEY ZEPHYR: Madam Chair, Attorney General, so just to clarify, U.S. companies selling our data to a foreign company who uses that to spy on us versus TikTok giving it to China, you see those as – you see the former as okay and the latter as not okay?

ATTORNEY GENERAL AUSTIN KNUDSEN: Madam Chair, Representative, no, I certainly did not say that and I certainly would not say that, and I would not advocate for that. I will also

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posit that this bill is now in your hands. I mean, Representative, if you feel like that should be amended into this bill, we would certainly take that into account. This is fully in the House's hands at this point, if you feel that necessary.

REPRESENTATIVE ZOOEY ZEPHYR: Thank you, Madam Chair.

ATTORNEY GENERAL AUSTIN KNUDSEN: But Representative, no, I certainly don't think one is better than the other. I think from a legal standpoint and from a First Amendment standpoint, we are on new ground here because this is an entity basically controlled by an enemy foreign actor. Madam Chair.

CHAIR AMY REGIER: Thank you. Any further questions? See none. Senator, would you like to close on your bill?

SENATOR SHELLEY VANCE: Thank you, Madam Chair, Members of the Committee. We are in new grounds. We're in very new ground. I offer these things for you to think about. TikTok is about power and control. I believe it's a national security issue. The CCP is using TikTok to study our people while invading on Americans' privacy. A common phrase to help government or business in Montana's legislative committee hearings is, "Here's another tool in the toolbox". TikTok is one of CCP's tool in their toolbox. Cui bono? Who benefits? I have no faith in our national administration. I'd like for us to send a message to other states and to Congress by passing Senate Bill 419 to ban TikTok in Montana. Thank you, Madam Chairman and Members of the House Judiciary.

CHAIR AMY REGIER: This closes the hearing on Senate Bill 419.

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I, Anders Nelson, hereby certify that “Transcript of March 28, 2023 Montana House Judiciary Committee Hearing on SB 419” is, to the best of my knowledge and belief, a true and accurate transcription in English.

A handwritten signature in black ink, appearing to read 'Anders Nelson', written over a horizontal line.

Anders Nelson
Project Manager

April 6, 2023